IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1233 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 3 - Applicant(s)
Versus
BAMANIYA NARVATSINH AKHAMBHAI & 2 - Respondent(s)

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Appearance :
MR DIPEN DESAI, APP for Applicant(s) : 1 - 4.
MR YM THAKKAR for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/10/2007

ORAL JUDGMENT

1. The State is in appeal against an order dated 12.3.2004 passed by the learned Additional District Judge, Godhra by which the Criminal

Appeal No.3/2004 filed by the respondents herein came to be partially allowed.

2. The respondents had set up a factory nearby the forest area. Apparently, a portion of the factory extended into the forest land on which a Shed was constructed. For having breached the provisions of Indian Forest Act, proceedings were initiated against the respondents. The Deputy Conservator of Forest, Godhra, by his order dated 19.1.2004 ordered confiscation of the factory and machinery of the respondents in exercise of powers under Section 61 of the Indian Forest Act. The respondents preferred an appeal before the Sessions Court which came to be partially allowed by the impugned order in which while setting aside the confiscation, learned Judge directed that upon the respondents removing the encroachment, their Plant and Machinery be handed over to them.

3. At the outset, learned advocate Shri Thakkar appearing for the respondents stated that the respondents have removed the encroachment and they have also received their belongings back. He also produced on record a map of the site in question prepared by DILR to demonstrate that the encroachment of the respondents was on a very small piece of land and that the entire factory was set up in the land belonging to the respondents themselves.

4. Having heard the learned advocates for the parties, it appears that the respondents themselves had admitted that there was inadvertent encroachment on the forest land by them. It appears that it is also not the case of the State that the respondents had deliberately encroached on the forest land or that the area under encroachment was large.

5. In view of this and also in view of the fact that pursuant to the impugned order, respondents have also removed the encroachment and received back the Plant and Machinery, this Court is required to take an overall view of the matter.

6. It may be noted that confiscation is ordered by the Competent Authority under the Indian Forest Act. It would be necessary that confiscation can be compounded upon payment of fine in terms of provisions contained in Section 68 of the Indian Forest Act, in the present case as is apparent from the map prepared by the DILR, such confiscation was on a very small piece of land. Particularly, when the factory of the respondents was not situated on such encroached land, the confiscation thereof could not have been ordered. Learned APP Shri Dipen Desai however, is justified in submitting that the learned Sessions Judge ought to have imposed some fine in lieu of confiscation at-least to

the extent respondents had encroached the forest land.

7. In view of peculiar facts of this case, though I find that learned Sessions Court ought to have ascertained the value of the belongings of the respondents covering the forest land and ought to have imposed the fine in lieu of confiscation of such belongings, it is not necessary to remand the entire proceedings for this limited purpose.

8. In the result, in exercise of extraordinary writ jurisdiction, it is directed that the respondents shall have to pay the fine of Rs.5,000/-(Rupees Five Thousand Only) to the State in lieu of confiscation and upon payment of such fine, this issue shall be deemed to have been closed. This shall be done within a period of four weeks from today.

9. The petition is disposed of. Rule made absolute accordingly.

(Akil Kureshi,J.)

(raghu)